

## COURT CALENDAR.

Supreme Court of the Hawaiian Islands, January Term, beginning Monday, January 5, 1891.

Mr. Justice McCully, presiding. A. P. Peterson, Attorney-General; G. Creighton, Deputy Attorney-General.

Court will open at 10 A. M. for preliminary business. Hawaiian jurors attend at 1 P. M., and foreign jurors when notified.

## HAWAIIAN JURY.

The King vs. John Kamakaia and Kelihoakano; murder. Davidson-Kaulukou for Kamakaia; Rosa for Kelihoakano.

The King vs. George Woolsey; assault and battery. Appeal from Police Court of Honolulu. Kaulukou for defendant. The King vs. Laueka; house-breaking. The King vs. D. Iosua; liquor selling without license. Appeal from Police Court of Honolulu. Kaulukou for defendant.

The King vs. James Shaw; assault and battery. Appeal from Police Court of Honolulu. Kaulukou for defendant. The King vs. Wm. Joet; vagrancy. Appeal from Police Court of Honolulu. The King vs. Maikai; larceny. Kauwe (k.) vs. Nod Kailani; ejectment. Smith for plaintiff.

## MIXED JURY.

S. A. Macy et al. vs. W. R. Castle; case. Neumann-Peterson for plaintiffs; Hatch for defendant.

Kaniku vs. J. M. Monsarrat; ejectment. Achi-Johnson for plaintiff; defendant in person.

Robert Palani et al. vs. Ipuhao et al.; ejectment. Smith for plaintiffs; Thurston-Kane for defendants.

Puka vs. Eliza Meek et al.; ejectment. Kane for plaintiff; Rosa for defendants. Eliza Harvey et al. vs. Fanny C. Graham; ejectment. Kane-Kane-Johnson for plaintiff; Brown for defendant.

Hawaiian Hotel Stables vs. Eliza K. Cummins; trespass. Carter for plaintiff; Brown for defendant.

Kamakaoia (w.) vs. Thow Chow; assignee in bankruptcy; replevin. Davidson for plaintiff; Ashford for defendant.

Wildner & Co. vs. John Richardson; assumpsit. Ashford for plaintiff.

Wildner & Co. vs. Hawaiian Fruit and Taro Co.; assumpsit. Ashford for plaintiff.

Emma M. Nakuina et al. vs. A. J. Lopez et al.; ejectment. Magoon for plaintiff; Rosa for defendant.

## FOREIGN JURY.

The King vs. Chong Hing and his others; violating Sec. 5, Chap. 41, Laws 1885, as to gaming. Appeal from Police Court of Honolulu. Ashford for defendants.

The King vs. Chong Hin; unlawful possession of opium. Appeal from Police Court of Honolulu. Magoon for defendant.

The King vs. Fook Chong; unlawful possession of opium. Appeal from Police Court of Honolulu. Ashford for defendant.

The King vs. W. O'Halloran; assault and battery. Appeal from Police Court of Honolulu. Davidson for defendant.

The King vs. J. Lyons; selling foreign goods without license. Appeal from Police Court of Honolulu.

The King vs. Ah Sung alias Sam Hoy; burglary. Ashford for defendant.

The King vs. Angee; perjury first degree. Ashford for defendant.

The King vs. Ah Hung; perjury first degree. Ashford for defendant.

The King vs. Ah Fook; perjury first degree. Ashford for defendant.

The King vs. Ah Hung alias Chock een; larceny fourth degree; appeal from Police Court of Honolulu. Davidson for defendant.

The King vs. R. Gerke; assault and battery; appeal from Police Court of Honolulu. Whiting for defendant.

The King vs. Akana; unlawful possession of opium; appeal from Police Court of Honolulu. Neumann for defendant.

The King vs. Young John Ying; assault and battery; appeal from Police Court of Honolulu.

J. E. Brown vs. F. J. Hill et al.; assumpsit. Neumann for plaintiff; Brown for defendants.

Sa Wai vs. J. H. Soper; damages; appeal from decision of McCully, J., at Chambers. Castle-Hatch for plaintiff; appellant. Creighton for defendant.

M. Crowley vs. Hawaiian Gazette Co.; trespass on the case. Davidson for plaintiff; Hatch for defendant.

A. M. Magoon, administrator, vs. S. Ahui; assumpsit. Whiting for plaintiff; Ashford-Hatch for defendant.

Wm. Wallace vs. E. Hutelison et al.; case. Neumann for plaintiff; Whiting for defendant.

Lau Hoe Fan vs. Lau Shou; trespass on the case. Neumann for plaintiff; Davidson for defendant.

Lea San vs. Lau Shou; trespass on the case. Neumann for plaintiff; Davidson for defendant.

H. Lindell vs. P. Neher and T. H. Trachler; trespass on the case. Neumann for plaintiff; Ashford for defendants.

Joe G. Barros vs. Antone Borba; assumpsit. Ashford for plaintiff; Davidson for defendant.

E. De Herblay vs. S. Norris; assumpsit. Neumann for plaintiff.

A. J. Campbell vs. P. G. Camarinos; covenant. Hatch for plaintiff; Neumann for defendant.

Tong On Jan & Co. vs. B. F. Dillingham; assumpsit. Neumann for plaintiffs.

B. Oliver vs. Hawaiian Gazette Co.; tort. Whiting-Neumann for plaintiff; Hatch for defendant.

L. Ahlo vs. Aka; assumpsit. Castle for plaintiff.

R. R. Ryeroff vs. R. Oliver, Minister of Interior, garnishee; assumpsit. Thurston for plaintiff; Neumann for defendant.

Trustees B. P. Bishop Estate vs. Chong Chow et al.; ejectment. Carter for plaintiff.

John Blossom vs. Ah Hin, alias Tai Sung; damage; appeal from Police Court of Honolulu. Magoon for plaintiff; Davidson for defendant, appellant.

Sylvano de Nobrega vs. Ah Hin, alias Tai Sung; damage; appeal from Police Court of Honolulu. Magoon for plaintiff; Davidson for defendant, appellant.

## CASES FROM OTHER COURTS.

Kalanola vs. Kekukahiko; ejectment. Kane for plaintiff; Rosa Kaulukou for defendant.

J. K. Kaunamano vs. W. A. Kila; ejectment. W. L. Holokuhiki for plaintiff.

## DIVORCES.

Joachim M. Sozo vs. Beke M. Makalea. Rosa for plaintiff.

Solomon Paakonia vs. Anehila (w.). Rosa for plaintiff.

Peter Fernandez vs. Victoria M. Fernandez. Davidson for plaintiff.

James Kaulane vs. Polly L. Kaulane. Rosa for plaintiff; Kaulukou for defendant.

Maria de J. Vierra vs. Antonio Vierra. Ashford for plaintiff.

Kukana Isaac (w.) vs. Isaac Beniamina (k.). Kane for plaintiff.

Henrietta T. Cottrell vs. Wm. L. Cottrell. Thurston for plaintiff.

D. K. Kapihe (k.) vs. Makacha Kapihe (w.). Kahookano for plaintiff.

Makaimi (k.) vs. Kamoepon (w.). Kahookano for plaintiff.

Leialoha (w.) vs. Kanalehe (k.). Achi for plaintiff.

Isabella M. Ferreira vs. Manuel Luiz Ferreira. Ashford for plaintiff.

Akena (w.) vs. Lau Fook (k.). Kaulukou for plaintiff.

Kellimahia Hanley vs. Daniel Hanley. Rosa for plaintiff.

BANCO.

The King vs. J. R. Gaspar; liquor selling without license; exceptions from 3d Circuit Court. Neumann for defendant.

L. B. Kerr vs. Wm. S. Wond, Minister of Finance, garnishee; assumpsit; defendant's appeal from Police Court of Honolulu. Parke for plaintiff.

M. McInerney vs. Wm. S. Wond, Minister of Finance, garnishee; assumpsit; defendant's appeal from Police Court of Honolulu. Parke for plaintiff.

J. Kila vs. P. Kahuhu; damage; exceptions from Dole, J., at Chambers. Castle for plaintiff; Kaulukou for defendant, appellant.

Supreme Court of the Hawaiian Islands.

## In Banco.

## OCTOBER TERM, 1890.

KAN WING CHEW vs. WONG LUNG.

BEFORE JUDD, C. J., M'CULLY, BICKERTON AND DOLE, J. J.

## OPINION OF THE COURT PER JUDD, C. J.

This is an appeal by plaintiff on points of law from the Police Court of Honolulu. The essential facts are as follows:

On August 21, 1889, the plaintiff obtained a judgment against defendant in the Police Court of Honolulu for \$226.35. The judgment was not paid, and a year having elapsed so that no execution could be taken out thereon, plaintiff brings an action in the aforesaid Court on the judgment.

Coincident with the application for the summons, the plaintiff made affidavit that "defendant now seeks to evade the payment of the said judgment by secreting his, said defendant's, property, and by transferring and intending to transfer the same to third parties not certainly known to this defendant," and on this affidavit and the filing of the bond required, in pursuance of Section 953 of the Civil Code, the Police Justice issued a warrant for the arrest of the defendant and his detention until he should enter into security to abide the result of the suit and pay the amount of such judgment as might be recovered by the plaintiff.

At the trial below, on September 1st, the plaintiff proved his judgment debt and obtained judgment therefor. The defendant then moved for his discharge from custody on the ground that he was guilty of no fraud and had not sought to evade the payment of his debt by secreting his property or by transferring or intending to transfer the same to a third party.

On the evidence adduced, the Police Justice found no fraud as alleged and discharged the defendant from custody.

The plaintiff appealed to this Court in Banco, and contends "that there is not in the statute in question nor elsewhere in our written law, any authority for the discharge of such defendant, after his arrest upon process, in regular form, issued in said section, without his giving the specified security."

The only statutory authority for the discharge of persons in arrest for any cause or accusation is the general provision in Section 893, that "the criminal jurisdiction (of Police Justices) shall be co-extensive with their respective circuits for the purpose of the arrest, examination, commitment and enlargement of parties accused." The case at bar is not criminal, nor a crown action, but it has a penal character. The defendant is thereunder imprisoned. He is a party accused, to wit, of a fraud. He is entitled to a hearing. If he is found not guilty he is to be held equally as if he were guilty? It would be anomalous and an exception to the general power of "enlargement." This term includes not merely release from imprisonment, but release from the condition of giving a bond. The process of arrest was granted upon specific alleged grounds. When it appears that they do not exist has not the magistrate power to vacate his order?

It does not seem to be a forced construction to hold that it comes within the terms of the statute we have cited, and if it were not expressed it would be implied by the statute otherwise a debtor committing no fraud might be kept in prison as long as his creditor was willing to pay the per diem of fifty cents for his support. Appeal dismissed.

C. W. Ashford for plaintiff; J. M. Davidson for defendant.

Honolulu, November 25, 1890.

Christmas services were held Wednesday evening at the Chinese Mission Church; they consisted of recitations, songs, etc. A Christmas tree well laden with presents was an attractive feature, especially for the children. Over \$80 was expended for the Japanese tree.

Supreme Court, Hawaiian Islands. In Banco.

## OCTOBER TERM, 1890.

## THE KING vs. SIN FOOK.

BEFORE JUDD, C. J., M'CULLY, BICKERTON AND DOLE, J. J.

Upon exceptions from the Circuit Court of the Fourth Judicial Circuit to which the case came by appeal from the Circuit Judge in Chambers on the point of law.

In order to incur the penalty of an illegal escape from custody, the party must have been legally arrested and be a prisoner lawfully detained. Construction placed on Section 3 of Chapter 29 of the Penal Code. Exceptions sustained.

## OPINION OF THE COURT BY M'CULLY, J.

The defendant was charged under Section 3 of Chapter 29 of the Penal Code with the offense of escaping from lawful custody. The section reads:

"Whoever, being a prisoner lawfully detained in the custody of any officer or any other person authorized by law to detain such prisoner, in any other case than those provided for in the preceding sections, escapes, shall be punished by imprisonment at hard labor not more than three months, and by fine not exceeding ten dollars."

A search warrant had been issued authorizing the search of the defendant's premises for opium. The exception states the case, as follows: "During the trial the Court ruled that the defendant was lawfully detained under the search warrant issued, while the search was going on in the case although no opium had been found upon him or his premises at that time, and dismissed the appeal." The notes of evidence by the Circuit Judge and all exhibits on file may be referred to as part of the exceptions. The search warrant follows the terms of the statute. It commands that search be made of the premises of Sin Fook for sundry packages of opium, and that if the same or any part thereof be found "that you bring the property so found together with the body of the said Sin Fook, or other the person in whose possession the said property shall be found, before me (the magistrate) for examination."

By this it appears that there was no authority to arrest the defendant to take him before the magistrate for examination unless the property searched for, in this case, opium, should be found; and no opium was found. What "lawful detention" then could he have been in from which he could make an illegal "escape"? He must have been arrested before he could be detained under arrest, and the contingency upon which the officers had authority to arrest had not occurred.

The state of being under arrest is a definite one. Our statute prescribes in Section 6 of Chapter 49 of the Penal Code the method of arrest. "If the officer have a warrant he must show it" \* \* \* if the arrest is made without warrant "he should give the party arrested clearly to understand for what cause he undertakes to make the arrest, and must require him to submit and accompany him to the jail or magistrate. This done the arrest is complete." The party then becomes a lawful prisoner in detention, and if by force or guile he gets away it is an escape. A person whom the officer has under suspicion may be watched and kept under observation if the officer is able to do so, but it is not an escape if he departs from view. There is no provision for legally holding a person in detention until he may or may not be arrested; hence no departure is an escape.

The argument is made that there would be a practical difficulty in securing and often in identifying the possessor of opium found by search warrants, if the suspected person could not be detained pending the search. This is the argument, *ab inconvenienti* which does not prevail in the construction of penal statutes.

The exception is sustained. Deputy Attorney-General Creighton for the Crown; F. M. Hatch for defendant.

Honolulu, Nov. 25, 1890.

## New Advertisements.

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1829-17

## Co-partnership Notice.

THE UNDERSIGNED PARTIES, AWAHA and J. C. Antone of Makawao, Island of Maui, have this 8th day of December, A. D. 1890, entered into and formed a co-partnership to be styled AWAHA & ANTOINE & Co., for the purpose of buying and selling Awa in the district of Makawao, during the term of the license for the year 1891.

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1829-17

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For Irrigation, 8 Compared with 12.

The 8-ft. Aermotor you sent me last year has given good satisfaction and has done more than you claimed it would do. I attached a 3-in. lift pump to it and can tell you it surprised every one to see so small a rod run so large a pump with so long a stroke (34 in.), and do so easily. Several gentlemen from Stockton came to look at my mill. They had seen one three pumping from a tub and they did not think it was strong enough to pump from a deep well, but when they saw mine in a 34-ft. well they were convinced of its power and very much pleased with it. My Aermotor would supply 1,000 head of cattle with water, but I do not use it for stock, but for irrigation. One day I noticed a 12-ft. \* \* \* wheel, 4-inch stroke, standing still for 3 hours when my 8-ft. wheel with 3-in. lift pump, 3-inch stroke, was pumping nicely. HICKVILLE, Cal., Feb. 24, 90. LOUIS MEYER.

8 Greater than 14.

The 8-ft. Aermotor is taking water out of a 116-ft. well, using 3-in. cylinder and 12-in. pipe. It works like a charm. The 12-ft. Aermotors are taking water, one from a 210-ft. the other from a 185-ft. well and work nicely; will run in a light breeze and pump water when a 14-ft. \* \* \* stands idle. A. C. MASSEY. SAN MATEO, CAL.

Same Work, Same Wells, 8 Equals 12. I am entirely satisfied with the 8-ft. Aermotor, as it is doing the same work the 12-ft. \* \* \* is doing, and both with same advantages and same depth of wells. GONZALES, Cal., Nov. 5, 1889. H. M. HAMMOND.

Regulates Well.

I pump water for about 100 head of cattle with my 8-ft. wheel. It runs lighter than any mill I ever saw, regulates well and gives no jerk to the pump. DIXON, Cal., Feb. 25, 1890. S. G. LITTLE.

Less Wind, More Water.

With the Aermotor there is absolutely no jerking of the pump. It runs with much less wind than 10-ft. wheels of other makes, and hence will pump more water. YOLO, Cal., Feb. 15, 1890. J. S. T. HADLEY.

Supplies House and Garden.

My Aermotor supplies water for the house and garden. It regulates all wind, runs better in light wind than any mill I ever saw, and handles the pump smoothly and safely. 6207 A. BAYVIEW. SAN FRANCISCO, CAL., Feb. 25, 1890.

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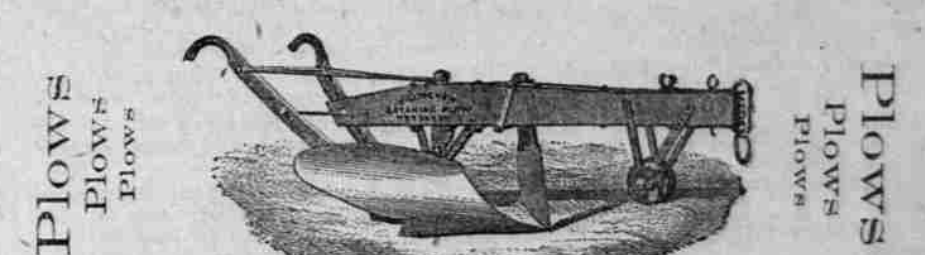
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